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Viewing cable 09BUENOSAIRES534, C) ARGENTINA: RECENT UNSETTLING DEVELOPMENTS

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SUBJECT: (C) ARGENTINA: RECENT UNSETTLING DEVELOPMENTS
POINT TO FRAYING ANTI-CORRUPTION FRAMEWORK

REF: BUENOS AIRES 0428

¶1. (C) Summary: Recent moves by the Government of Argentina (GoA) undermine the independence and efficacy of Argentine agencies with jurisdiction over corruption cases. In early March, Manuel Garrido, Argentina's chief prosecutor for corruption cases resigned, claiming frustration over perceived limitations placed on his authorities by Prosecutor General Esteban Righi. From late 2008 through February 2009, the head of the National Auditor General's Office (AGN), Leandro Despouy, spoke out publicly against what he, the press and the opposition characterized as GoA attempts to limit his purview. Both Garrido and Despouy have investigated and publicly reported findings implicating irregularities by Kirchner officials and allies. President Kirchner appointed a family friend, Julio Vitobello, to head the Anticorruption Office (OA) and another ally, Carlos Pacios, to replace Vitobello in the National Comptroller's Office (SIGEN). In the Kirchners' home province of Santa Cruz, a Kirchner niece is in charge of the "investigation" into questionable land deals involving the Kirchners and their circle. These developments point to a weak and emasculated institutional framework in Argentina's intermittent attempts to combat public corruption. End Summary

GARRIDO'S RESIGNATION

¶2. (U) In mid-March, Argentina's top District Attorney in the National Prosecutor's Office for Administrative Investigations (FIA), Manuel Garrido, resigned from the FIA after five years as its head. Garrido, opposition politicians, respected NGOs, local press, and blogs criticized the GoA's treatment of Garrido and characterized the forced resignation as a loss in Argentina's fight against corruption. Garrido claimed his resignation stemmed from Prosecutor General Esteban Righi's promulgation of Resolution 147/08 in early November 2008, which reduced the FIA's powers. The FIA was created by law to investigate potential

criminal activity of national public officials. Righi's resolution establishes that the FIA would no longer have a direct role in cases that did not initiate with a criminal complaint by the FIA, reflecting a restrictive interpretation of the FIA's legal authorities and effectively constricting Garrido's ability to intervene in cases against public officials.

13. (U) Garrido sharply criticized Righi's measure, warning that the FIA would cease to exist as an independent and specialized entity to prosecute crimes committed by public officials and requesting Congressional action. Garrido further suggested that the lack of a specialized, independent body investigating public corruption went against Argentina's duties as a signatory to the United Nations Convention Against Corruption. Righi retorted that Garrido should abstain from ""self-promoting campaigns"" regarding his role in the fight against corruption.

14. (SBU) Garrido had distinguished himself as the prosecutor who filed or advanced the most high-level corruption cases implicating administration officials. Garrido had an important role in the following cases: the alleged manipulation of the National Statistical Agency (INDEC) by Secretary of Internal Commerce Guillermo Moreno; the Skanska corruption allegations; the bag of money found in the office of then-Economy Minister Felisa Miceli; the alleged illicit enrichment of Nestor Kirchner and, separately, of the former debt negotiator Daniel Marx; the overpricing of public works contracts; the installation of electricity cables in southern Argentina by Electroingenieria, a company with close ties to the Kirchners which employs the son of Planning Minister De Vido; the management of official GOA advertising by Press Secretary Enrique Albistur; train repairs by Transport Secretary Ricardo Jaime; and the decision process for granting highway concessions. Press reports noted, however, that although Garrido had launched over a hundred investigations in five years (compared to four investigations in nine years by his predecessor), he had not obtained any

convictions during his tenure.

A CHORUS OF COMPLAINTS

15. (U) In announcing his resignation, Garrido complained he had suffered "infinite difficulties, setbacks, and trip-ups and inexpressible episodes of resistance, administrative and structural deficiencies." Garrido told newspaper "La Nacion"

he was convinced that Argentina offered impunity to corruption. His resignation letter was reportedly a long attack on Righi's resolution and the harm it produced to the authorities of the FIA and to anticorruption efforts in general. In his conclusion, Garrido asserted that, while corruption is common to all countries, Argentine corruption regrettably sets itself apart in its impunity and the lack of commitment to confront it.

16. (U) From the opposition, Radical Party (UCR) Senate leader Ernesto Sanz, the vice president of the Council of Magistrates, sought to call attention to Garrido's resignation. UCR National Deputy and bloc leader Oscar Aguad claimed Garrido was mistreated and cornered by the administration for being one of the few with the courage to challenge its power. Civic Coalition National Deputy and bloc leader Adrian Perez also joined the criticism, explaining the resignation as a consequence of the administration's deliberate policies to weaken and destroy the country's institutions of control. Center-right PRO National Deputy Esteban Bullrich accused the administration of obstructing corruption investigations.

17. (U) Laura Alonso and Delia Rubio, of the NGO Citizen Power (Poder Ciudadano), said the resignation was a setback in the fight against corruption. Similarly, the Center for the Investigation and Prevention of Economic Criminality (CIPCE) denounced Garrido's resignation as an additional indicator of Righi's unwillingness to investigate economic crimes. CIPCE

claimed ""the judicial system systematically fails in its mission to clarify the penal responsibility of the businesspeople and officials involved in such acts. And, clearly, the Ministry of Public Prosecution has the primary responsibility for this situation.""

THE DEFENSE

18. (U) Righi denied all of the accusations against him and said he would have preferred for Garrido to remain in his position. At the same time, Righi accused Garrido of damaging the reputation of the Prosecutor General's office by filing highly publicized but poorly documented, premature criminal complaints. Righi said he had not limited Garrido's authorities.

PARTING SHOTS

19. (U) Before he left, Garrido filed several more criminal complaints implicating GOA officials. One accuses Claudio Uberti, the former toll road regulator who was fired in the ""Valijagate"" scandal, and Jorge Simeonoff in the Planning Ministry of administrative irregularities and presumed collusion with the highway construction firm Coviare in contract negotiations. The other two cases accuse the Executive Branch of irregularities in the management of campaign financing -- specifically regarding the broadcasting of political events on a private cable network using public funds -- and presumed irregularities in another highway concession with the firm Caminos del Valle SA. Garrido presented the campaign finance complaint to the National Electoral Chamber. Garrido also filed a criminal complaint alleging overpricing in an electricity cabling project run by Electroingenieria, a company with close ties to the Kirchner administration.

TRANSPARENCY UNDER ATTACK

¶10. (SBU) The Argentine National Accounting Office (AGN) is at the center of a second set of debates about independent voices in the Argentine government structure. The press gave prominent coverage to a shouting match at a public meeting in February of the AGN's governing board. The Congress set up the AGN to be headed by someone, currently Leandro Despouy, named by the opposition to audit the GOA. At the February meeting, Despouy thwarted efforts by Kirchner allies to limit his authority in setting the agenda for the AGN and impede publication of the agency's reports. Despouy noted that not a single AGN report had been refuted in seven years, but warned the AGN was at risk of losing its credibility as had, he claimed, the GOA's controversial statistics agency (INDEC). He identified the AGN report on overpricing in a public works project awarded to Electroingenieria as the leading factor prompting the GOA's move against him. The report was posted to the AGN website on December 3, 2008, after being approved and signed by all seven General Auditors in Resolution 199/08-AGN and being submitted to Congress, but it was removed in January when the GOA denied its existence

and content. On February 10, "Clarín" published an editorial piece by Despouy in which he defended the AGN's record and called attention to the administration's attack on transparency as represented by its attempt to limit the publication of AGN reports. The AGN report on Electroingenieria was reposted online and remained available as of early May 2009.

KIRCHNERIST ALLIES ATOP SIGEN AND ANTICORRUPTION OFFICE

¶11. (SBU) President Kirchner in January transferred Julio Vitobello, head of the National Comptroller's Office (SIGEN), to take over as head of the Anti-Corruption Office (OA) in place of Abel Fleitas Ortiz de Rozas, who died in December. The OA falls under the Ministry of Justice and has

jurisdiction to investigate any use of state funds.

Vitobello was brought into the Kirchner administration by former Cabinet Chief Alberto Fernandez. From 2000 to 2003 he served in the Buenos Aires city legislature for the Peronist Party (PJ) and from 1993 to 1997 he served as chief of staff to the Interior Secretary. "La Nacion" said Vitobello had opened the lowest number of investigations ever during his 2008 tenure at the head of SIGEN, part of a chorus of accusations that Vitobello as head of the OA would not fulfill his mandate to investigate official corruption proactively and effectively. Vitobello is reported to be close to the Kirchners and joins in weekend soccer games organized by former president Nestor Kirchner at the Olivos presidential residence. Vitobello was replaced in SIGEN by the former adjunct Comptroller General, Carlos Pacios, another official reported to be close to the Kirchners and former Cabinet Chief Alberto Fernandez.

REAL ESTATE GAMES: ALL IN THE FAMILY

¶12. (U) In the Kirchners' home province of Santa Cruz, the investigation of a case against members of the administration and their allies in the business sector remains stalled. The case focuses on the preferential sale of large properties to approximately 50 top administration officials, including the Kirchners, and pro-administration businesspeople during the final years of the tenure of Nestor Mendez, the mayor of El Calafate from 1995 to 2007. The investigation is in the hands of prosecutor Natalia Mercado, who is the daughter of Minister of Social Development Alicia Kirchner and niece of former president Nestor Kirchner. The case began with a formal complaint filed by local UCR leader and former mayoral candidate Alvaro de Lamadrid and it focuses on the purchase of municipal land by the Kirchners and close associates, including Rudy Ulloa, Lazaro Baez, Carlos Sancho, Fulvio Madaro, Natalia Mercado herself, Romina Mercado, Julio Ciurca and Ricardo Etchegaray. Nestor Kirchner reportedly re-sold two hectares (20,000 square meters) to a Chilean investment

group for US\$2 million -- forty times what he paid after less than two years. Lamadrid also alleges that the municipality promotes a public works policy designed to benefit these VIP landowners. Mendez is at the center of the case, accused of abuse of authority and influence trafficking. Now a provincial congressional deputy for the Victory Front (FPV) party, Mendez insists the sales were legit.

COMMENT

¶13. (C) Argentina's corruption scandals frequently make a big splash at the outset, only to dissipate into oblivion due to the languid pace of the "investigations" and the endless juridical ping-pong to which they are submitted. According to the local NGO Center for the Study and Prevention of Economic Crimes, corruption cases in Argentina took 14 years, on average, to be resolved and only 15 out of 750 cases tried resulted in convictions (see also Ref B). At the FIA, Garrido kept up a frenetic level of activity in launching over 100 investigations, but he did not obtain a single conviction in over five years. At the AGN, Despouy gets high marks for maintaining high standards of integrity, but questions persist as to the AGN's efficacy and impact. At the OA, Vitobello's cozy chumminess with the Kirchners suggests a conflict of interest, as does the court decision in Santa Cruz to have the Kirchners' niece investigate questionable land deals. Glaring weaknesses in key components of Argentina's anti-corruption architecture point to an emasculated institutional framework incapable of providing needed checks and balances. For these and other reasons, Transparency International again named Argentina in mid-April among nine countries in the region that failed to implement established anticorruption practices.

KELLY

=====CABLE ENDS=====